

SIEMENS

PATENT
Attorney Docket No. 2002P13033WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor:	T. Talanis et al.)	
)	Group Art Unit: 2109
Serial No.:	10/524,782)	
)	Examiner: Nguyen, Phong H.
Filed:	02/16/2005)	Confirmation No. 3400
Title:	APPARATUS, IN PARTICULAR AN AUTOMATION DEVICE, HAVING A FILE DIRECTORY WHICH IS STORED IN A FILE		

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APPELLANT'S BRIEF UNDER 37 CFR 41.37

Sir:

This brief is in furtherance of the Notice of Appeal filed in this application on October 3, 2007.

(Please proceed to the following page.)

1. **REAL PARTY IN INTEREST - 37 CFR 41.37(c)(1)(i)**

The real party in interest in this Appeal is the assignee of the present application, Siemens Aktiengesellschaft.

2. **RELATED APPEALS AND INTERFERENCES - 37 CFR 41.37(c)(1)(ii)**

There is no other appeal, interference or judicial proceeding that is related to or that will directly affect, or that will be directly affected by, or that will have a bearing on the Board's decision in this Appeal.

3. **STATUS OF CLAIMS - 37 CFR 41.37(c)(1)(iii)**

Claims cancelled: 1 - 18.

Claims withdrawn but not canceled: None.

Claims pending: 19 - 37.

Claims allowed: none.

Claims rejected: 19 - 37.

The claims on appeal are 19 - 37. A copy of the claims on appeal is attached hereto in the Claims Appendix. Appellants respectfully appeal the final rejection of claims 19 – 37.

4. **STATUS OF AMENDMENTS - 37 CFR 41.37(c)(1)(iv)**

In response to the initial, non-final Office Action mailed January 29, 2007 the claims were amended to fully distinguish over all of the applied art (anticipation and obviousness over the prior art cited by applicant appellants: Carpentier et al. WO 01 18633 alone or in combination with Lenz U.S. 6,029,196). In response, an amendment was presented to further distinguish over the art of record, but the request for allowance of the rejected claims (as amended) necessitated new grounds of rejection (*based on the **same** two prior art references*) and resulted in issuance of the Final Office Action mailed 3 July, 2007. Subsequently, applicant appellants filed a Response

(without amendment) requesting withdrawal of the final rejection (under 37 CFR 1.116 on 20 August 2007). That Response clearly explained why the claims were different and non-obvious over any combination of the same two prior art references cited by the applicant appellants. Statements in the Advisory Action mailed September 4, 2007 make of record specific examiner interpretations and applications of the prior art used to support the final rejection. Appellant applicants continue to disagree with these interpretations and applications of the prior art, and therefore no amendments were proposed subsequent to the Final Office Action.

5. **SUMMARY OF THE CLAIMED SUBJECT MATTER- 37 CFR 41.37(c)(1)(v)**

Embedded systems are special-purpose computer or microprocessor-based systems incorporating devices to perform one or several hardware-based functions, sometimes with real-time constraints such as requiring micro-second response times, e.g., to deploy actuators. An apparatus, e.g., a computer system, providing control functions for operation of a device such as a sensor, actuator, or other hardware subsystem, has what are referred to as embedded computer functions. The combination of the control apparatus (e.g., a specialized computer system) and the device being controlled form what is commonly referred to as an embedded system.

With reference to the specification (page 16, line 35 – page 17, line 32) and an exemplary embodiment shown in Figure 4, the invention provides solutions for changing operation of controlled devices, especially in the field of factory automation, in accord with a specified hierarchical file directory structure 12 (see also Figure 2 and page 11, lines 15 – 37) having the format 15, 16 (see page 12, line 1 – page 13 line 13) defined in claim 19. Specifically, the invention relates to an apparatus (e.g., a computer system 30, termed an automation device), which is remotely accessible and remotely configurable based on information provided in the pre-specified format 15, 16 and stored in the file directory structure 12. This arrangement enables an apparatus 30, e.g., in an embedded factory automation system, to control or change operation of a device 39 (i.e., such as a sensor, actuator, motor or system) in accord with instructions provided through a communication network 33.

Thus an apparatus 30 according to the invention is not only suited to operate and control a device 39, but is also suited to receive and implement files 11 on a device 39 as illustrated in

the flow diagram of Figure 3. See page 16, lines 1-8 and, more generally, page 15, line 19 – page 16, line 8. Such implementation is in accord with the specific directory structure defined in claim 19. None of the prior art uses this directory structure to implement files on such a device.

In the exemplary directory structure shown in Figure 2, the received file 11 has a directory structure 12 which includes an identifying start symbol <BASE> and an end symbol </BASE>. The file 12 includes a series of subdirectories 17, 18, 19, 20 and 21 each identified with a start symbol such as <Disc_C> and an end symbol </Disc_C> such that the contents of each of the files 21 (according to which the apparatus is be responsive to control device operation) are also identifiable by characteristic start and end symbols such as <C2_b-file 1.html> and </C2_b-file 1.html>. The contents of each of these files are stored between the start and end symbols.

As discussed in the specification at page 17, lines 13-23, the apparatus, also sometimes referred to as an “automation device” may take the form of a computer which receives and stores files 11 in a storage medium 31 and is enabled to operate as a web server. The apparatus 30 can then be addressed directly by another user/participant in the communication network 33, perhaps an automation system.

This arrangement effects modified operation or control of a device, e.g., a motor 39 through a communication network 33 in accord with the contents of a file directory 11 positioned between the start and end symbols. Thus, both the apparatus and the device can be remotely configured.

As described at page 4, lines 10-21, in one embodiment an internet-compatible language is used for describing the file directory structure, and in another embodiment, one or more files in the subdirectories of the file structure 12 are XML files. Referring also to page 8, lines 6-15, with an apparatus according to claim 19, HTML pages, other files and configuration data, which are required for an automation device or embedded device, can be remotely uploaded and stored in an automation device. And, as described at page 8, line 25 – page 9, line 2, with the aforescribed configuration for the apparatus 30, it is also possible to remotely generate a Web site, to store the web site pages as XML files, and send the pages via the communications network to the apparatus 30 which will accept the content of the XML files in accord with the flow diagram of Figure 3 and carry out all implementations.

The hierarchical file directory structure, required by all Web servers and previously portrayed in a different format than the structure 12, is now implemented and satisfied using a hierarchical structural such as common to XML language, namely incorporating a pre-specified format comprising start and end symbols or so-called "tags". See page 9, lines 3-8.

Based on the foregoing citations from the specification, in one embodiment, the invention of independent claim 19 is directed to an apparatus 30 (Figure 4) configured to receive files 11 and updates thereto through a communication network 33. The files 11 are assembled in a file directory structure 12 (Figure 2) and the apparatus 30 is made responsive to control operation of a device 39 according to one or more of the files 11. The exemplary apparatus includes storage 31 for storing the file directory structure 12. The exemplary file directory structure includes (see Figures 1 and 2):

- a first hierarchy level 3 and a second hierarchy level 4 designed as a subordinate level of the first hierarchy level;

- a first file directory Dir_C1 situated on the first hierarchy level;

- a second file directory SubDirC2_a situated on the second hierarchy level; and

- a first file C-file1.html situated on the first or the second hierarchy level or on a subordinate hierarchy level,

- wherein the file directory structure 12 is held in a second file 11,

- wherein each file directory (e.g., <Dir_C2>) and each file (e.g., <C2_b-file 1.html>) of the file directory structure 12 is listed consecutively in the second file 11,

- wherein each file directory (e.g., <Dir_C2>) and each file (e.g., <C2_b-file 1.html>) of the file directory structure is identified by at least one characteristic start symbol (e.g., <Disc_C>) and/or at least one characteristic end symbol (e.g., <Disc_C>),

- wherein the contents of each file directory and each file in the file directory structure are stored in each case between the respective characteristic symbols,

- and wherein the file directory structure 12 enables the apparatus 30 to operate as a web server, thereby enabling remote access to control or change operation of the device 39.

6. GROUND OF REJECTION TO BE REVIEWED UPON APPEAL - 37 CFR 41.37(c)(1)(vi)

Independent claim 19, and dependent claims 20 – 37, were rejected under Section 103 based on WO 01/18633, referred to as “Carpentier” (described by applicants as background prior art at page 2 of the specification), in view of U.S. 6,029,196 referred to as “Lentz” (also cited by applicants). Ignoring certain requirements set forth in the claims, the rejection extracts certain components of the prior art out of their proper context and reassembles them in a contrived, but failed effort to create the claimed subject matter. As explained in the argument which follows, the resulting composite fails to meet the terms of claim 19 or any of the claims which depend therefrom.

7. ARGUMENT 37 CFR 41.37(c)(1)(vii)

APPELLANTS TRAVERSE ALL REJECTIONS BASED ON CARPENTIER IN VIEW OF LENTZ

7A. ALL OF THE REJECTIONS ARE IMPROPER BECAUSE THE REJECTION OF THE INDEPENDENT CLAIM 19 IS IMPROPER.

The Appellant traverses all of the claim rejections under 35 USC 103 because the combination of Carpentier in view of Lentz, used to reject independent claim 19 fails to disclose each feature recited in the claim.

7B. RELIANCE ON THE CARPENTIER REFERENCE FOR DISCLOSING AN APPARATUS BEING RESPONSIVE TO CONTROL OPERATION OF A DEVICE IS MISPLACED.

The first basis with which the Carpentier reference was relied upon to reject claim 19, according to the Final Office Action (see page 2), is that this reference allegedly discloses

“an apparatus ... responsive to control operation of a device according to one or more of the files (Page 19 line 32 – Page 20 line 3 ...[which passage is paraphrased by the Examiner as saying that] Automatic behavior may be added to a descriptor file that performs certain actions when a descriptor file is used to retrieve files e.g. automatically send electronic mail or publish on web sites (control operation of a device)) ...”

The underlying contention is that literal wording

“apparatus ... to control operation of a device”

can be stretched and re-interpreted so as to read out of the claim the very word “device.” That is, according to the rejection, no device is required, so that the control of purely software-based activities, i.e., control of a software application or any other utility (e.g., to automatically send email or post a web page) can be read into the scope of the claim. This is because the Carpentier reference only relates to controlling the operation of software while the invention requires controlling the operation of a device, i.e., hardware. There is absolutely no reference in Carpentier to any “device” and it is only the Examiner who attempts to “find” a device being controlled in this reference.

The term “device” as used throughout the specification and claims is only in the context of a hardware device and there is no prior art which can be consistently applied to reject the claims by reading the claimed “device” on pure software. This is evident from the further argument (below) which establishes that the combination of Carpentier and Lenz do not provide the claimed subject matter.

The rejection *blurs* the distinction between hardware and software by implying that an operation performed in software is no different than controlling a device and these different functions can be interchanged as though there is no technical impediment for doing so. This strategy to reject the claims is most apparent in the rejection of claims 35 and 36 wherein, in the face of explicitly requiring that the device is an “embedded device” or an “automation device” the Examiner still equates the claimed device with software. To the contrary, devices deal with the real world. Absent the Examiner’s unfounded contention that Carpentier discloses controlling operation of a device, there is no reason to interpret the claims as describing any of the software

activities described by the reference. The Carpentier reference does not disclose controlling any device.

The Examiner's effort to unduly "stretch" the meaning of the word device beyond the context of appellants' claim phrase

"apparatus ... to control operation of a device"

is most clearly evidenced by the Examiner's statements relating to rejection of dependent claims 35 through 37. See pages 9 and 10 of the Final Office Action. These statements equate an embedded device with a software plug-in and equate an automatic software installation (*an activity*) with an automation device (*a physical object*). The claims 35 – 37 expressly require that the claimed device is hardware as already understood by the plain meaning of the word "device" as used throughout the patent specification and consistently applied in all of the claims. That is, the claims state that the claimed device is "an embedded device" or an "automation device" or placed in "an automation system." None of this is consistent with reading the claimed device on software or a software activity.

In summary, the term "device" as used throughout the specification and claims is well-understood to be hardware and there is no prior art combination which can be consistently applied by reading the claimed "device" on pure software. For example, as explained herein, the Carpentier reference has numerous deficiencies which have to be overlooked in order to make the combination, and, further, the combination does not render transmission of the claimed file structure over a communication network to control operation of a device.

7C. ANY FILE DIRECTORY STRUCTURE DISCLOSED IN THE CARPENTIER REFERENCE IS INCONSISTENT WITH APPLICANTS' CLAIMED FILE STRUCTURES AND APPLICANTS' CLAIMED FILE STRUCTURES ARE ABSENT FROM THE CARPENTIER REFERENCE.

The Final Office Action (See page 3) relied upon several passages and Figure 5 of the Carpentier reference to argue that the reference discloses the file directory structure of claim 19. As now explained, there are at least **five** deficiencies in the Examiner's argument.

First, the rejection relies on Carpentier for disclosing “a first hierarchy level and a second hierarchy level designed as a subordinate level of the first hierarchy level ...” citing page 16, lines 21-23 but, at the same time, the rejection also expressly acknowledges that this passage merely states: “Any number of folders and any hierarchy may be represented in the descriptor file ...” The reference does not disclose any specific hierarchical relationships.

Second, the rejection also references Fig. 5 for allegedly showing folder 310 and folder 342 at different hierarchy levels, but this is not at all the case. In fact, nothing in Figure 5 suggests that these folders are at different hierarchical levels. Further, the Examiner has not and cannot cite any passage in the Carpentier reference to support this speculation. Nothing can be gleaned from the text or the figures to support the argument. Further, for reasons given below, it is noted, in this instance the Examiner has read the folders 310 and 342 on appellants’ claimed **file directories**.

Third, the rejection again references Fig. 5, this time reading the same folder 310 on appellants’ claimed **first file** “situated on the first or the second hierarchy level ...” The folder 310 has already been read on the claimed first file directory so the Examiner cannot do this. Moreover, Figure 5 does not at all disclose any indication of hierarchical levels between files or among folders. 310 and 344 cannot be said to be at different hierarchical levels.

Fourth, the rejection relies on the foregoing three unsupported contentions in order to incorrectly conclude that, given the claimed structure, the Carpentier reference further provides the claimed structure wherein

“each file directory and each file of the file directory structure is identified by at least one characteristic start symbol and/or at least one characteristic end symbol ...”

To support this erroneous contention the rejection refers to Figure 6A, which as stated at page 20, lines 4-6 “illustrates an example of an implementation of a descriptor file ...” This is insufficient support for the rejection because claim 19 requires more than one file to have the recited attribute. That is, claim 19 requires that **every** file have the attribute of “at least one characteristic start symbol and/or at least one characteristic end symbol ...” Figure 6A does not illustrate every file and every file directory of Carpentier; and the reference never suggests that all files and directories have the claimed feature.

Fifth, and most significantly, the Examiner has chosen to read the descriptor file as Appellants' "second file" which holds appellants claimed hierarchical file directory structure. This cannot be for two reasons:

- (1) appellants' second file directory situated on the second hierarchy level; and
- (2) appellants' file directory structure requires at least two hierarchical levels.

In contrast to these requirements, and as shown in Figure 6A **the descriptor file of Carpentier does not include two levels of hierarchy** and therefore cannot disclose a second directory on a second (subordinate) hierarchy level.

Based on at least these five deficiencies in the prior art applicant appellants' claimed file directory structure is absent from and inconsistent with all file structures disclosed in the Carpentier reference. These deficiencies, together, render the rejection flawed and improper.

7D. THE COMBINATION OF CARPENTIER IN VIEW OF LENZ IS IMPROPER BECAUSE IT REQUIRES A RECONSTRUCTION OF THE CARPENTIER REFERENCE AND STILL LACKS THE CLAIMED FEATURES.

The rejection had to rely on the Lenz reference because, as acknowledged in the Final Office Action (see page 4), Carpentier does not disclose an apparatus configured to receive files and updates through a communication network "with files assembled in the file directory structure as claimed." In making the above-quoted portion of this admission, the Examiner has identified the very deficiency which neither Lenz nor any other prior art can remedy. That is, while the Lenz reference was relied upon for disclosing the well-known fact that clients can be configured to receive files through a network, this is not sufficient disclosure to meet the terms of claim 19. There is simply no prior art that teaches or suggests transmitting files according to the claimed hierarchical file directory structure to

"an apparatus configured to receive [the] files ... through a communication network ... [for] enabling remote access to control or change operation of the device."

Mere reference to Lenz for disclosing the well-known transmission of data from servers to clients does *nothing* to assemble subject matter closer to that which is claimed. There is absolutely no reason the Lenz reference would use the file structure disclosed by Carpentier (which is not the claimed file structure) to provide the functions described in the Lenz reference.

In fact, since Carpentier does not at all suggest use of the descriptor file (Figure 6A) for transmission in a communication network, there is no basis at all to argue that the combined teachings of the references would result in use of either appellants' file directory structure or Carpentier's file structure for transmission over a communication network. Therefore, if these references were to be combined, the combined teachings would **not** result in the claimed subject matter.

Clearly, a fatal deficiency of the combination resides in the fact that neither of the references suggests providing files and updates having the claimed directory structure through a communication network. Although it has already been established that Carpentier does not disclose the claimed directory structure (Section 7C herein), then, *arguendo* (solely for the purpose of argument), even if this were the case (i.e., if the Carpentier reference actually did disclose the details of appellants' claimed file directory structure), then, still, there would be no basis to suggest using such a structure over a communication network to enable "remote access to control or change operation of the device." Carpentier does not disclose using Carpentier's file structure over a communication network to enable "remote access to control or change operation of the device." And Lenz provides no suggestion of this either. Rather, it is only the appellants who teach using the claimed file directory structure to enable an apparatus "to control or change operation of the device."

Thus presenting the rejection by combining the references cannot be a simple matter of connecting "dots" to form the claimed invention because the dots which the examiner attempts to connect are missing from the references and the Examiner must add them to fill in the missing teachings. Thus, even though the Examiner finds Carpentier and Lenz to be analogous art, the combined teachings are not sufficient to even recreate the claimed invention.

It is only in hindsight of appellants' teachings that the combination was contrived. But, instead of resulting in the claimed subject matter, a modification of Carpentier with the rudimentary data transfer of Lenz would only be additive and would not result in the claimed subject matter. No combination of the prior art discloses the combined features of transmitting

appellants' directory structure over a communication network in order to enable remote access to control or change operation of a device.

7E. PATENTABILITY OF EACH CLAIM SHOULD BE SEPARATELY CONSIDERED.

All claims have been rejected based on the same combination of Carpentier and Lenz. The foregoing general argument, based on deficiencies in the rejection of claim 19, demonstrates patentability of all claims. However, none of the rejected claims stand or fall together. This is because each dependent claim defines a unique combination that patentably distinguishes over the art of record.

Patentability of each dependent claim is separately argued and should therefore be separately considered. Argument demonstrating patentability of each dependent claim is presented under subheadings identifying each claim by number. The Board is requested to consider each argument presented with regard to each dependent claim because each of the claims further distinguishes over the prior art.

Furthermore, when reviewing the subject matter of claims 35-37, the Board is requested, based on the argument already presented in Section 7B, above, to specifically address the Examiner's errors regarding the interchange of prior art software plug-ins and software actions with appellants' claimed device and system.

7F. EACH OF THE DEPENDENT CLAIMS IS PATENTABLE AND FURTHER DISTINGUISHES THE INVENTION OVER THE PRIOR ART.

Each of the claims depending from Claim 19 further distinguishes over the prior art. No combination of any art of record can render any of the dependent claims obvious.

7F(1). Claim 20 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

Claim 20 further distinguishes the invention over the art of record because it requires that "an Internet-compatible language is used for describing the file directory structure." It is the combination of this feature in an apparatus configured to receive files through a communication

network to control operation of a device with the claimed file directory structure that is claimed and not simply the use of an Internet-compatible language.

7F(2) Claim 21 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

The apparatus of claim 21 distinguishes over the prior art combination because the second file, in which the file directory structure is stored, is an XML file and the XML language is used for the purpose of description. It is the combination of this feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply the use of an XML file and the XML language.

7F(3) Claim 22 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

The apparatus of claim 22 distinguishes because the XML language is used for describing the file directory structure. The claimed combination is non-obvious because it is the combination of this feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply the use of an XML language for describing the file directory structure.

7F(4) Claim 23 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

The apparatus of claim 23 is non-obvious because it requires that a new line is used both for each characteristic start symbol and for each characteristic end symbol in the second file. It is the combination of this feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply the use of a characteristic start symbol and a characteristic end symbol in a file.

7F(5) Claim 24 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

According to claim 24, the designation of the relevant file directory or of the relevant file is used as a characteristic start symbol, and the designation of the relevant file directory or of the relevant file is used as a characteristic end symbol and a predeterminable character is added as a prefix. The claimed combination is non-obvious because it is the combination of this feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply the use of designations as start and end symbols. This combination is absent from the prior art.

7F(6) Claim 25 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

In the apparatus of claim 25 the second file includes further sections having other contents, said further sections being identified or separated in each case by at least one characteristic start symbol and at least one characteristic end symbol. This combination of subject matter is patentably distinct. Again, it is the combination of this feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply that further sections are identified or separated in each case by at least one characteristic start symbol and at least one characteristic end symbol.

7F(7) Claim 26 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

In the apparatus of claim 26 configuration data is stored in at least one of the further sections of the second file. This subject matter is not suggested in the prior art because it is the combination of the above-recited feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure

that is claimed and not simply that data is stored in at least one of the further sections of the second file.

7F(8) Claim 27 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

The combination of claim 27 includes result codes and/or error codes stored in at least one of the further sections of the second file. This further distinguishes over the prior art in part because it is the combination of the above-recited feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply that result codes and/or error codes are stored in at least one of the further sections of the second file.

7F(9) Claim 28 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

The combination of claim 28 is non-obvious, including a feature wherein the apparatus comprises a mechanism for receiving and/or storing the second file via a communication network. This further distinguishes over the prior art in part because it is the combination of the above-recited feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply that the apparatus comprises a mechanism for receiving and/or storing the second file via a communication network.

7F(10) Claim 29 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

In the combination of claim 29 the communication network is the Internet and/or a Intranet and/or a radio connection. The combination of features further distinguishes over the prior art because it is the combination of the above-recited feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply that the communication network is the Internet and/or a Intranet and/or a radio connection.

7F(11) Claim 30 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

The combination of claim 30 further defines patentable subject matter, requiring that a configuration of the apparatus, using the configuration data which is present in the second file, can be carried out automatically after the second file has been loaded onto the apparatus. This combination of features further distinguishes over the prior art because it is the combination of the above-recited feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply that a configuration of the apparatus can be carried out automatically after the second file has been loaded onto the apparatus.

7F(12) Claim 31 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

The combination of claim 31 requires, in addition to other features, that the apparatus is coupled to a communication network taken from the group consisting of an intranet, the internet and a radio-connected network and the device is a motor. This combination of features further distinguishes over the prior art because it is the combination of the above-recited feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply that the apparatus is coupled to a communication network taken from the group consisting of an intranet, the internet and a radio-connected network and the device is a motor.

7F(13) Claim 32 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

According to claim 32 an update of the file directory structure can be carried out by overwriting an original file version of the second file with a new file version. It is the combination of the above-recited feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure

that is claimed and not simply that an update of the file directory structure can be carried out by overwriting an original file version.

7F(14) Claim 33 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

In the combination of claim 33 an update of the configuration data can be carried out by overwriting an original file version of the second file with a new file version. Again, it is the combination of the above-recited feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply that an update of the configuration data can be carried out by overwriting an original file version.

7F(15) Claim 34 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

According to claim 34, after the second file has been updated, a previously set configuration data of the apparatus onto which the original file version of the second file was loaded, can automatically be checked and adapted. It is the combination of the above-recited feature in an apparatus configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed and not simply that after the second file has been updated, a previously set configuration data of the apparatus can automatically be checked and adapted.

7F(16) Claim 35 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

In the combination of claim 35 the apparatus is an embedded device. None of the art of record teaches an embedded device which receives the defined file directory structure. The Examiner attempts to reject this claim by citing Carpentier at page 19, lines 18-19, but this rejection, again, reflects an effort to equate hardware with software. That is, the Examiner wants to make an embedded device a software plug-in, and this is inconsistent with what an embedded device is. See Section 5, above, beginning at page 3, which explains that embedded devices are

ones which perform hardware-based functions. Further, it is the combination of the apparatus being an embedded device configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed. This is non-obvious subject matter.

7F(17) Claim 36 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

The apparatus of claim 36 is an automation device. None of the prior art suggests use of the claimed file directory structure to remotely control an automation device. The Examiner attempts to reject this claim by citing Carpentier at page 19, lines 18-19, but this rejection, again, reflects an effort to equate hardware with software. That is, the Examiner wants to reduce an automation device a mere software plug-in, and this is inconsistent with what an automation device does. All automation devices require hardware to interface with the real world. See, again, Section 5, above, beginning at page 3. Further, it is the combination of the apparatus being an automation device configured to receive files through a communication network to control operation of a device with the claimed file directory structure that is claimed. This is also non-obvious subject matter.

7F(18) Claim 37 is Patentably Distinct over the Combination of Carpentier in View of Lenz.

Claim 37 further distinguishes the invention in that it covers an “automation system having at least one apparatus ...” The Examiner has apparently misunderstood what an automation system is, because the applied art does not at all disclose this combination. An automation system is capable of interfacing a computer system with hardware to provide control over operations. See, again, Section 5, above, beginning at page 3.

7F. CONCLUSIONS

Argument has been presented to demonstrate that the rejections under Sections 103 are deficient and that the dependent claims further distinguish over the prior art. The Examiner has

argued rejections under Section 103 when claimed features are absent from the references. Accordingly, there cannot be a rejection under Section 103 and any efforts to reject the claims under Section 103 would amount to no more than a hindsight reconstruction of the prior art. In fact, the rejections under Section 103 require reconstruction of the Carpentier reference that is inconsistent with the Carpentier reference reference, and, further, the requisite teachings for the claimed invention are absent from the combination of Carpentier and Lenz. For all of these reasons all of the rejections should be withdrawn and the claims should be allowed.

8. **APPENDICES**

An appendix containing a copy of the claims involved in this appeal is provided herewith. No evidence appendix or related proceedings appendix is provided because no such evidence or related proceeding is applicable to this appeal.

Respectfully submitted,

Dated: 11/16/07

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9. APPENDIX OF CLAIMS ON APPEAL

Claims:

19. An apparatus configured to receive files and updates thereto through a communication network, with the files assembled in a file directory structure, the apparatus being responsive to control operation of a device according to one or more of the files, the apparatus including storage for storing the file directory structure, the file directory structure including:

- a first hierarchy level and a second hierarchy level designed as a subordinate level of the first hierarchy level;

- a first file directory situated on the first hierarchy level;

- a second file directory situated on the second hierarchy level; and

- a first file situated on the first or the second hierarchy level or on a subordinate hierarchy level, wherein

- the file directory structure is held in a second file, wherein each file directory and each file of the file directory structure is listed consecutively in the second file, wherein each file directory and each file of the file directory structure is identified by at least one characteristic start symbol and/or at least one characteristic end symbol, and wherein the contents of each file directory and each file in the file directory structure are stored in each case between the respective characteristic symbols,

said file directory structure enabling the apparatus to operate as a web server, thereby enabling remote access to control or change operation of the device.

20. The apparatus as claimed in Claim 19, wherein an Internet-compatible language is used for describing the file directory structure.

21. The apparatus as claimed in Claim 19, wherein the second file, in which the file directory structure is stored, is an XML file and the XML language is used for the purpose of description.

22. The apparatus as claimed in Claim 21, wherein the XML language is used for describing the file directory structure.

23. The apparatus as claimed in Claim 19, wherein a new line is used both for each characteristic start symbol and for each characteristic end symbol in the second file.

24. The apparatus as claimed in Claim 19, wherein the designation of the relevant file directory or of the relevant file is used as a characteristic start symbol, and the designation of the relevant file directory or of the relevant file is used as a characteristic end symbol and a predeterminable character is added as a prefix.

25. The apparatus as claimed in Claim 19, wherein the second file includes further sections having other contents, said further sections being identified or separated in each case by at least one characteristic start symbol and at least one characteristic end symbol.

26. The apparatus as claimed in Claim 25, wherein configuration data is stored in at least one of the further sections of the second file.

27. The apparatus as claimed in Claim 25, wherein result codes and/or error codes are stored in at least one of the further sections of the second file.

28. The apparatus as claimed in Claim 19, wherein the apparatus comprises a mechanism for receiving and/or storing the second file via a communication network.

29. The apparatus as claimed in Claim 28, wherein the communication network is the Internet and/or a Intranet and/or a radio connection.

30. The apparatus as claimed in Claim 26, wherein a configuration of the apparatus, using the configuration data which is present in the second file, can be carried out automatically after the second file has been loaded onto the apparatus.

31. The apparatus as claimed in Claim 19, wherein the apparatus is coupled to a communication network taken from the group consisting of an intranet, the internet and a radio-connected network and the device is a motor.

32. The apparatus as claimed in Claim 19, wherein an update of the file directory structure can be carried out by overwriting an original file version of the second file with a new file version.

33. The apparatus as claimed in Claim 26, wherein an update of the configuration data can be carried out by overwriting an original file version of the second file with a new file version.

34. The apparatus as claimed in Claim 26, wherein after the second file has been updated, a previously set configuration data of the apparatus onto which the original file version of the second file was loaded, can automatically be checked and adapted.

35. The apparatus as claimed in Claim 19, wherein the apparatus is an embedded device.

36. The apparatus as claimed in Claim 19, wherein the apparatus is an automation device.

37. An automation system having at least one apparatus as claimed in Claim 19.

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10. EVIDENCE APPENDIX - 37 CFR 41.37(c) (1) (ix)

None

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11. RELATED PROCEEDINGS APPENDIX - 37 CFR 41.37(c) (1) (x)

None